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 JELLY BELLY CANDY COMPANY
 9

10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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13 JELLY BELLY CANDY COMPANY, a California corporation, 14 Plaintiff, 15 v. 16 ARAN CANDY LTD., an Irish corporation, SWEETSTALL.COM LTD., a British corporation, and DOES 1 through 100, 18 inclusive 19 Defendants.	13) Civil Action No. 14) 15) 16) 17) 18) 19) 20) 21) 22)	COMPLAINT FOR TRADEMARK INFRINGEMENT; FALSE DESIGNATIONS OF ORIGIN, UNFAIR COMPETITION, AND TRADE DRESS INFRINGEMENT; TRADEMARK AND TRADE DRESS DILUTION; TRADEMARK AND TRADE DRESS INFRINGEMENT; FALSE OR MISLEADING STATEMENTS; AND TRADEMARK DILUTION DEMAND FOR JURY TRIAL
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1 Plaintiff Jelly Belly Candy Company (“Jelly Belly”), by and through its undersigned
 2 counsel, hereby makes and files this Complaint against Defendants Aran Candy Ltd.
 3 (“Aran”), Sweetstall.com Ltd. (“Sweetstall”), and DOES 1 through 100, inclusive
 4 (collectively “Defendants”).

5 **JURISDICTION AND VENUE**

6 1. This is an action for trademark infringement in violation of Section 32(1) of
 7 the Trademark Act of 1946, 15 U.S.C. §1051, *et seq.*, as amended (hereinafter referred to as
 8 the “Lanham Act”), 15 U.S.C. §1114(1); unfair competition, false designations of origin, and
 9 trade dress infringement in violation of Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a);
 10 trademark dilution in violation of Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c);
 11 trademark and trade dress infringement in violation of California Business & Professions
 12 Code §14335 and California common law; unfair competition in violation of California
 13 Business & Professions Code §17200 and California common law; false or misleading
 14 statements in violation of California Business & Professions Code §17500; and trademark
 15 dilution in violation of California Business & Professions Code §14330 and California
 16 common law. Plaintiff seeks equitable relief and damages in an amount to be determined
 17 according to proof at trial.

18 2. This Court has jurisdiction over the subject matter of the federal claims
 19 pursuant to 28 U.S.C. §§1331 and 1338 and 15 U.S.C. §1121. This Court has jurisdiction
 20 over the remaining claims under 28 U.S.C. §1367(a).

21 3. Venue is proper in this Court pursuant to 28 U.S.C. §1391.

22 **PARTIES**

23 4. Jelly Belly is a corporation organized and existing under the laws of the State
 24 of California, having its principal place of business at One Jelly Belly Lane, Fairfield,
 25 California 94533. Jelly Belly produces, distributes, and sells gourmet jelly beans and other
 26 premium candy.

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5. Upon information and belief, Aran is a corporation organized and existing under the laws of Ireland, having its principal place of business at Hexagon Buildings, IDA Business and Technology Park, Snugborough Road, Blanchardstown, Dublin 15, Ireland.

6. Upon information and belief, Aran has committed the acts complained of herein in this Judicial District. Aran is doing business within the Northern District of California over the internet by, *inter alia*, maintaining a website with a link that allows consumers in this Judicial District and elsewhere to purchase Aran's jelly bean products.

7. Upon information and belief, Sweetstall is a corporation organized and existing under the laws of Britain, having a principal place of business at Unit 9, 572 Ipswich Road, Colchester, Essex, CO4 9HB.

8. Upon information and belief, Sweetstall has committed the acts complained of herein in this Judicial District, and is doing business within the Northern District of California by, *inter alia*, maintaining a website that allows customers in this Judicial District and elsewhere to purchase Aran's jelly bean products.

9. Plaintiff does not know the true names and capacities of the Defendants sued herein as DOES 1 through 100, inclusive, and therefore sue these Defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained.

10. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, each of the Defendants was the agent and employee of each of the remaining Defendants, and in doing the things hereinafter alleged, was acting within the course and scope of such agency and employment.

FACTS

11. Jelly Belly advertises, markets, manufactures, and sells gourmet jelly beans and other premium branded candy throughout the United States and internationally under the trademark JELLY BELLY®.

12. Since 1976, and prior to Defendants' acts complained of herein, Jelly Belly has continuously and extensively used a distinctive logo (the "JELLY BELLY Logo") in

1 interstate and international commerce in connection with its products. Based on this
2 widespread use, Jelly Belly has established substantial goodwill in the JELLY BELLY Logo,
3 and the JELLY BELLY Logo has acquired and continues to have secondary meaning. Due to
4 the foregoing, Jelly Belly has obtained common law trademark rights in the JELLY BELLY
5 Logo.

6 13. In addition, Jelly Belly owns federal trademark registrations for the JELLY
7 BELLY Logo. Specifically, Jelly Belly owns U.S. Registration Number 1,203,786 for the
8 mark JELLY BELLY and Design, which issued on August 3, 1982. Jelly Belly has complied
9 with the requirements of 15 U.S.C. §1065 and, as a result, this registration has become
10 uncontested. A true and correct copy of this registration is attached hereto as Ex. 1.

11 14. Jelly Belly also owns U.S. Registration Number 1,232,091 for the mark
12 JELLY BELLY and Design, which issued on March 22, 1983. Jelly Belly has complied with
13 the requirements of 15 U.S.C. §1065 and, as a result, this registration has become
14 uncontested. A true and correct copy of this registration is attached hereto as Ex. 2.

15 15. Jelly Belly also owns U.S. Registration Number 2,836,178 for the mark
16 JELLY BELLY and Design, which issued on August 27, 2004. A true and correct copy of
17 this registration is attached hereto as Ex. 3.

18 16. Jelly Belly also owns California Trademark Registration Number 62,724 for
19 the mark JELLY BELLY and Design, which issued on January 5, 1981 and which has been
20 renewed to January 5, 2011. A true and correct copy of the renewal certificate is attached
21 hereto as Ex. 4.

22 17. The JELLY BELLY Logo is widely recognized throughout the United States
23 and California, and is a famous mark within the meaning of Section 43(c) of the Lanham Act,
24 15 U.S.C. §1125(c) as well as Cal. Bus. & Prof. Code § 14330.

25 18. Since at least 1982, and prior to Defendants' acts complained of herein, Jelly
26 Belly has continuously and extensively used distinctively styled menus ("JELLY BELLY
27 Menu") in interstate and international commerce in connection with its jelly beans. Based on
28 this widespread use, Jelly Belly has established substantial goodwill in the overall appearance

1 of the JELLY BELLY Menu, and the overall appearance of the JELLY BELLY Menu has
2 acquired and continues to have secondary meaning. The overall appearance of the JELLY
3 BELLY Menu is nonfunctional. Due to the foregoing, Jelly Belly has obtained common law
4 trademark rights in the overall appearance of the JELLY BELLY Menu. An example of a
5 JELLY BELLY Menu is attached hereto as Ex. 5.

6 19. Prior to Defendants' acts complained of herein, Jelly Belly has continuously
7 and extensively used distinctive names, including but not limited to BUTTERED POPCORN,
8 CRUSHED PINEAPPLE, ISLAND PUNCH, SIZZLING CINNAMON, and TOASTED
9 MARSHMALLOW (collectively "JELLY BELLY Flavor Names") in connection with its
10 jelly beans. Jelly Belly has used the name BUTTERED POPCORN since at least 1989,
11 CRUSHED PINEAPPLE since at least 1995, ISLAND PUNCH since at least 1988,
12 SIZZLING CINNAMON since at least 1993 and TOASTED MARSHMALLOW since at
13 least 1988. Based on this widespread use, Jelly Belly has established substantial goodwill in
14 each of the JELLY BELLY Flavor Names, and each of the JELLY BELLY Flavor Names
15 have acquired and continue to have secondary meaning. Due to the foregoing, Jelly Belly has
16 obtained common law trademark rights in each of the JELLY BELLY Flavor Names.

17 20. Since 1981, and prior to Defendants' acts complained of herein, Jelly Belly's
18 jelly beans ("JELLY BELLY Beans") have had the following characteristics: (1) they are a
19 smaller size compared to traditional jelly beans; (2) they have a "kidney bean" shape;
20 (3) there is a speckled color pattern on a significant portion of beans in any given package;
21 and (4) they come in a wide variety of fanciful and gourmet flavors.

22 21. Since at least 1983, and prior to Defendants' acts complained of herein, Jelly
23 Belly has used a "humanized jelly bean character" on its packaging, advertising, and point of
24 sale material ("JELLY BELLY Humanized Jelly Bean Character"). Jelly Belly also owns
25 U.S. Registration Number 1,337,901 for the JELLY BELLY Humanized Jelly Bean
26 Character, which issued on May 28, 1985. Jelly Belly has complied with the requirements of
27 15 U.S.C. §1065 and, as a result, this registration has become incontestable. A true and
28 correct copy of this registration is attached hereto as Ex. 6.

1 22. The JELLY BELLY Humanized Jelly Bean Character is widely recognized
2 throughout the United States and California and is a famous mark within the meaning of
3 Section 43(c) of the Lanham Act, 15 U.S.C. §1125(c) as well as Cal. Bus. & Prof. Code §
4 14330.

5 23. Since at least 1985, and prior to Defendants' acts complained of herein, Jelly
6 Belly has continuously and extensively used a distinctive nonfunctional trade dress ("JELLY
7 BELLY Trade Dress") in commerce in connection with its jelly beans. That trade dress
8 consists of any combination of two or more of the following: (1) JELLY BELLY Beans; (2)
9 JELLY BELLY Menus; (3) JELLY BELLY Flavor Names; (4) a humanized jelly bean
10 character; and (5) JELLY BELLY Logo. Based on this widespread use, Jelly Belly has
11 established substantial goodwill in the JELLY BELLY Trade Dress, and the JELLY BELLY
12 Trade Dress has acquired and continues to have secondary meaning. Due to the foregoing,
13 Jelly Belly has acquired common law rights in the JELLY BELLY Trade Dress.

14 24. Upon information and belief, Defendants sell and distribute jelly beans and
15 other candies in this Judicial District and elsewhere.

16 25. Upon information and belief, Defendants have sold and are selling jelly beans
17 with at least the following characteristics: (1) they are virtually the same size as Jelly Belly's
18 jelly beans; (2) they have virtually the same shape as Jelly Belly's jelly beans; (3) they have
19 virtually the same speckled color pattern as used by Jelly Belly on a significant portion of
20 beans in any given package; and (4) they come in a wide variety of fanciful and gourmet
21 flavors, including virtually the same flavors sold by Jelly Belly.

22 26. Upon information and belief, Defendants have used and are using a logo that is
23 confusingly similar to the JELLY BELLY Logo and is likely to confuse consumers as to the
24 relationship or origin of Jelly Belly's and Defendants' goods.

25 27. Upon information and belief, Defendants have used and are using menus on at
26 least some of the packaging of the jelly bean products they sell. The overall appearance of
27 the menus used by Defendants are confusingly similar to the JELLY BELLY Menu and are
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1 likely to confuse consumers as to the relationship or origin of Jelly Belly's and Defendants'
 2 goods.

3 28. Upon information and belief, Defendants have used and are using the
 4 following jelly bean names on at least the packaging of the jelly bean products they sell:
 5 BUTTERED POPCORN, CRUSHED PINEAPPLE, ISLAND PUNCH, SIZZLING
 6 CINNAMON, and TOASTED MARSHMALLOW. Because these names are identical to the
 7 JELLY BELLY Flavor Names, Defendants' use of each of these names is likely to confuse
 8 consumers as to the relationship or origin of Jelly Belly's and Defendants' goods.

9 29. Upon information and belief, Defendants have used and are using a humanized
 10 jelly bean character on at least some of the packaging of the jelly bean products they sell.
 11 The overall appearance of the humanized jelly bean character used by Defendants is
 12 confusingly similar to the JELLY BELLY Humanized Jelly Bean Character and is likely to
 13 confuse consumers as to the relationship or origin of Jelly Belly's and Defendants' goods.

14 30. Defendants' combination of its jelly beans, its logo, its particular menus, its
 15 flavor names, and its humanized jelly bean character is likely to confuse consumers as to the
 16 relationship or origin of Jelly Belly's and Defendants' goods.

17 31. Upon information and belief, Defendants advertise and sell jelly beans through
 18 its active websites located at the domain names www.arancandy.com,
 19 www.jellybeanfactory.com, and www.sweetstall.com. Defendants' active websites include
 20 information regarding Aran's jelly beans, as well as a purchase order form through which
 21 consumers located throughout the United States, including California, may place orders to
 22 purchase jelly beans. For example, Defendants' active websites located at
 23 www.arancandy.com and www.jellybeanfactory.com provide a link for consumers in the
 24 United States to buy its jelly bean products. This link connects consumers to a website
 25 operated by Sweetstall, which offers delivery of the jelly bean products to consumers in
 26 California.

27 32. Upon information and belief, Defendants' active websites operate as a virtual
 28 store located in California by soliciting sales and servicing individuals in California and are

1 used to interactively sell jelly beans and exchange information and data with consumers
2 located throughout the United States, including California.

3 33. Upon information and belief, Defendants can receive and transmit data to
4 consumers located in California and throughout the United States as a result of their use of
5 the active websites located at the domain names www.arancandy.com,
6 www.jellybeanfactory.com, and www.sweetstall.com. For example, consumers can email
7 Defendants via several electronic mail addresses including, but not limited
8 to, “info@arancandy.com” and “sally@sweetstall.com,” which appear on Defendants’ active
9 websites. Defendants’ active websites located at the domain names www.arancandy.com,
10 www.jellybeanfactory.com, and www.sweetstall.com further interact with consumers by
11 collecting information about visitors to the website.

COUNT ONE

TRADEMARK INFRINGEMENT

IN VIOLATION OF SECTION 32(1) OF THE LANHAM ACT

15 34. Plaintiff incorporates herein and realleges, as if fully set forth in this
16 paragraph, the allegations of Paragraphs 1 through 33 above.

17 35. This is a claim for infringement of federally registered trademarks and arises
18 under Section 32(1) of the Lanham Act, 15 U.S.C. §1114.

19 36. Jelly Belly is informed and believes, and thereon alleges, that Defendants' use
20 of their jelly bean logo and humanized jelly bean character constitutes trademark
21 infringement of Jelly Belly's registrations for the JELLY BELLY Logo and JELLY BELLY
22 Humanized Jelly Bean Character under 15 U.S.C. §1114.

37. Jelly Belly is informed and believes, and thereon alleges, that Defendants' trademark infringement was and continues to be willful and intentional.

38. Jelly Belly is informed and believes, and thereon alleges, that Defendants' trademark infringement will continue unless enjoined by this Court.

27 39. Jelly Belly is informed and believes, and thereon alleges, that Defendants have
28 derived and received, and will continue to derive and receive, gains, profits and advantages

1 from their trademark infringement in an amount that is not presently known to Jelly Belly.
2 By reason of the aforesaid acts, Jelly Belly has been damaged and is entitled to monetary
3 relief in an amount to be determined at trial.

4 40. Because of Defendants' trademark infringement, Jelly Belly has suffered and
5 continues to suffer great and irreparable injury, for which Jelly Belly has no adequate remedy
6 at law.

COUNT TWO

**FALSE DESIGNATIONS OF ORIGIN, UNFAIR COMPETITION, AND TRADE
DRESS INFRINGEMENT IN VIOLATION OF
SECTION 43(a) OF THE LANHAM ACT**

11 41. Plaintiff incorporates herein and realleges, as if fully set forth in this
12 paragraph, the allegations of Paragraphs 1 through 40 above.

13 42. This is a claim for unfair competition, false designation of origin, and trade
14 dress infringement and arises under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

15 43. Jelly Belly is informed and believes, and thereon alleges, that Defendants'
16 acts, as complained of herein, constitute unfair competition, false designation of origin, and
17 trade dress infringement under Section 43(a) of the Lanham Act, 15 U.S.C. §1125(a).

18 44. Jelly Belly is informed and believes, and thereon alleges, that the aforesaid
19 acts of unfair competition, false designation of origin, and trade dress infringement were and
20 continue to be willful and intentional.

21 45. Jelly Belly is informed and believes, and thereon alleges, that the aforesaid
22 acts of unfair competition, false designation of origin, and trade dress infringement will
23 continue unless enjoined by this Court.

24 46. Jelly Belly is informed and believes, and thereon alleges, that Defendants have
25 derived and received, and will continue to derive and receive, gains, profits and advantages
26 from the aforesaid acts of unfair competition, false designation of origin, and trade dress
27 infringement in an amount that is not presently known to Jelly Belly. By reason of the

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1 aforesaid acts, Jelly Belly has been damaged and is entitled to monetary relief in an amount to
2 be determined at trial.

3 47. Because of Defendants' acts of unfair competition, false designation of origin,
4 and trade dress infringement, Jelly Belly has suffered and continues to suffer great and
5 irreparable injury, for which Jelly Belly has no adequate remedy at law.

COUNT THREE

**TRADEMARK AND TRADE DRESS DILUTION IN VIOLATION OF
SECTION 43(c) OF THE LANHAM ACT**

9 48. Plaintiff incorporates herein and realleges, as if fully set forth in this
10 paragraph, the allegations of Paragraphs 1 through 47 above.

11 49. The JELLY BELLY Logo and JELLY BELLY Humanized Jelly Bean
12 Character became famous prior to Defendants' acts complained of herein.

13 50. Defendants' acts complained of herein tarnish, diminish and dilute the
14 distinctive quality of the JELLY BELLY Logo and JELLY BELLY Humanized Jelly Bean
15 Character.

16 51. Defendants' acts complained of herein have tarnished, diminished, and eroded
17 the goodwill Jelly Belly has long enjoyed in the JELLY BELLY Logo and JELLY BELLY
18 Humanized Jelly Bean Character.

19 52. Jelly Belly is informed and believes, and thereon alleges, that the aforesaid
20 acts of dilution were and continue to be willful and intentional.

21 53. Jelly Belly is informed and believes, and thereon alleges, that the aforesaid
22 acts of dilution will continue unless enjoined by this Court.

23 54. Jelly Belly is informed and believes, and thereon alleges, that Defendants have
24 derived and received, and will continue to derive and receive, gains, profits and advantages
25 from the aforesaid acts of dilution in an amount that is not presently known to Jelly Belly. By
26 reason of the aforesaid acts, Jelly Belly has been damaged and is entitled to monetary relief in
27 an amount to be determined at trial.

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55. Because of Defendants' acts of dilution, Jelly Belly has suffered and continues to suffer great and irreparable injury, for which Jelly Belly has no adequate remedy at law.

COUNT FOUR

TRADEMARK AND TRADE DRESS INFRINGEMENT

UNDER CALIFORNIA LAW

56. Plaintiff incorporates herein and realleges, as if fully set forth in this paragraph, the allegations of Paragraphs 1 through 55 above.

57. This is a claim for trademark and trade dress infringement and arises under Cal. Bus. & Prof. Code §14335 and California common law.

58. Jelly Belly is informed and believes, and thereon alleges, that Defendants' acts, as complained of herein, constitute infringement of Jelly Belly's trademark rights in the JELLY BELLY Logo and JELLY BELLY Humanized Jelly Bean Character under California statutory laws and common law, as the JELLY BELLY Logo and JELLY BELLY Humanized Jelly Bean Character are protected under the common law, and are registered under Title 15 of the United States Code and are thereby protectable against unauthorized use and infringement under the statutes of California, particularly under Cal. Bus. & Prof. Code §14335.

59. Jelly Belly is informed and believes, and thereon alleges, that Defendants' acts, as complained of herein, constitute infringement of Jelly Belly's rights in the Jelly Belly Menu, each of the JELLY BELLY Flavor Names, JELLY BELLY Humanized Jelly Bean Character, and JELLY BELLY Trade Dress under California common law, as the Jelly Belly Menu, each of the JELLY BELLY Flavor Names, JELLY BELLY Humanized Jelly Bean Character, and JELLY BELLY Trade Dress are all valid at common law and are thereby protectable against unauthorized use and infringement under California common law.

60. Jelly Belly is informed and believes, and thereon alleges, that Defendants' trademark and trade dress infringement was and continues to be willful and intentional.

61. Jelly Belly is informed and believes, and thereon alleges, that Defendants' trademark and trade dress infringement will continue unless enjoined by this Court.

1 62. Jelly Belly is informed and believes, and thereon alleges, that Defendants have
2 derived and received, and will continue to derive and receive, gains, profits and advantages
3 from their trademark and trade dress infringement in an amount that is not presently known to
4 Jelly Belly. By reason of the aforesaid acts, Jelly Belly has been damaged and is entitled to
5 monetary relief in an amount to be determined at trial.

6 63. Because of Defendants' trademark and trade dress infringement, Jelly Belly
7 has suffered and continues to suffer great and irreparable injury, for which Jelly Belly has no
8 adequate remedy at law.

COUNT FIVE

UNFAIR COMPETITION UNDER CALIFORNIA LAW

11 64. Plaintiff incorporates herein and realleges, as if fully set forth in this
12 paragraph, the allegations of Paragraphs 1 through 63 above.

13 65. This is a claim for unfair competition and arises under Cal. Bus. & Prof. Code
14 §17200, *et seq.* and California common law.

15 66. Jelly Belly is informed and believes, and thereon alleges, that Defendants'
16 acts, as complained of herein, constitute unfair competition under the common law and
17 statutes of California, particularly under Cal. Bus. & Prof. Code §17200, *et seq.*

18 67. Jelly Belly is informed and believes, and thereon alleges, that Defendants' acts
19 of unfair competition were and continue to be willful and intentional.

68. Jelly Belly is informed and believes, and thereon alleges, that Defendants' acts
of unfair competition will continue unless enjoined by this Court.

22 69. Jelly Belly is informed and believes, and thereon alleges, that Defendants have
23 derived and received, and will continue to derive and receive, gains, profits and advantages
24 from their acts of unfair competition in an amount that is not presently known to Jelly Belly.
25 By reason of the aforesaid acts, Jelly Belly has been damaged and is entitled to monetary
26 relief in an amount to be determined at trial.

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1 70. Because of Defendants' unfair competition, Jelly Belly has suffered and
2 continues to suffer great and irreparable injury, for which Jelly Belly has no adequate remedy
3 at law.

COUNT SIX

FALSE OR MISLEADING STATEMENTS UNDER CALIFORNIA LAW

6 71. Plaintiff incorporates herein and realleges, as if fully set forth in this
7 paragraph, the allegations of Paragraphs 1 through 70 above.

8 72. This is a claim for false or misleading statements and arises under Cal. Bus. &
9 Prof. Code §17500 and California common law.

10 73. Jelly Belly is informed and believes, and thereon alleges, that Defendants'
11 acts, as complained of herein, constitute false or misleading statements under the common
12 law and statutes of California, particularly under Cal. Bus. & Prof. Code §17500.

13 74. Jelly Belly is informed and believes, and thereon alleges, that Defendants'
14 false or misleading statements were and continue to be willful and intentional.

15 75. Jelly Belly is informed and believes, and thereon alleges, that Defendants'
16 false or misleading statements will continue unless enjoined by this Court.

17 76. Jelly Belly is informed and believes, and thereon alleges, that Defendants have
18 derived and received, and will continue to derive and receive, gains, profits and advantages
19 from their false or misleading statements in an amount that is not presently known to Jelly
20 Belly. By reason of the aforesaid acts, Jelly Belly has been damaged and is entitled to
21 monetary relief in an amount to be determined at trial.

22 77. Because of Defendants' false or misleading statements, Jelly Belly has
23 suffered and continues to suffer great and irreparable injury, for which Jelly Belly has no
24 adequate remedy at law.

COUNT SEVEN

TRADEMARK DILUTION UNDER CALIFORNIA LAW

27 78. Plaintiff incorporates herein and realleges, as if fully set forth in this
28 paragraph, the allegations of Paragraphs 1 through 77 above.

1 79. This is a claim for trademark dilution arising under Cal. Bus. & Prof. Code
2 §14330 and California common law.

3 80. Defendants' use of the famous JELLY BELLY Logo and JELLY BELLY
4 Humanized Jelly Bean Character has diluted the distinctive quality thereof, and such conduct
5 is likely to further tarnish and dilute the JELLY BELLY Logo and JELLY BELLY
6 Humanized Jelly Bean Character in violation of the common law and statutes of California,
7 particularly under Cal. Bus. & Prof. Code §14330.

8 81. Jelly Belly is informed and believes, and thereon alleges, that the aforesaid
9 acts of dilution were and continue to be willful and intentional.

10 82. Jelly Belly is informed and believes, and thereon alleges, that the aforesaid
11 acts of dilution will continue unless enjoined by this Court.

12 83. Jelly Belly is informed and believes, and thereon alleges, that Defendants have
13 derived and received, and will continue to derive and receive, gains, profits and advantages
14 from the aforesaid acts of dilution in an amount that is not presently known to Jelly Belly. By
15 reason of the aforesaid acts, Jelly Belly has been damaged and is entitled to monetary relief in
16 an amount to be determined at trial.

17 84. Because of Defendants' acts of dilution, Jelly Belly has suffered and continues
18 to suffer great and irreparable injury, for which Jelly Belly has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Jelly Belly prays for judgment in its favor against Defendants for the following relief:

22 A. An Order adjudging Defendants to have infringed the JELLY BELLY Logo
23 under 15 U.S.C. §1114:

24 B. An Order adjudging Defendants to have infringed the JELLY BELLY
25 Humanized Jelly Bean Character under 15 U.S.C. §1114:

26 C. An Order adjudging Defendants to have engaged in unfair competition, false
27 designation of origin, and trade dress infringement under 15 U.S.C. §1125(a);

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1 D. An Order adjudging Defendants to have engaged in trademark dilution under
2 15 U.S.C. §1125(c);
3 E. An Order adjudging Defendants to have infringed the JELLY BELLY Logo,
4 JELLY BELLY Menu, each of the JELLY BELLY Flavor Names, the JELLY
5 BELLY Humanized Jelly Bean Character, and JELLY BELLY Trade Dress under the
6 common law and statutes of California;
7 F. An Order adjudging Defendants to have engaged in acts of unfair competition
8 under the common law and statutes of California;
9 G. An Order adjudging Defendants to have made false or misleading statements
10 under the common law and statutes of California;
11 H. An Order adjudging Defendants to have engaged in trademark dilution under
12 the common law and statutes of California;
13 I. A preliminary and permanent injunction enjoining Defendants, their officers,
14 agents, servants, employees and attorneys, and those persons in active concert or
15 participation with Defendants, from directly or indirectly (a) infringing the JELLY
16 BELLY Logo and JELLY BELLY Humanized Jelly Bean Character in violation of
17 15 U.S.C. §1114, (b) engaging in acts of unfair competition, false designation of
18 origin, and trade dress infringement in violation of 15 U.S.C. §1125(a), (c) engaging
19 in acts of trademark dilution in violation of 15 U.S.C. §1125(c); (d) infringing the
20 JELLY BELLY Logo, JELLY BELLY Menu, any of the JELLY BELLY Flavor
21 Names, the JELLY BELLY Humanized Jelly Bean Character, and the JELLY
22 BELLY Trade Dress in violation of the common law and statutes of California, (e)
23 engaging in acts of unfair competition in violation of the common law and statutes of
24 California, (f) making false or misleading statements in violation of the common law
25 and statutes of California; and (g) engaging in acts of trademark dilution in violation
26 of the common law and statutes of California;

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1 J. That Defendants be required to account to Jelly Belly for any and all profits
2 derived by them, and all damages sustained by Jelly Belly by reason of Defendants'
3 acts complained of herein;

4 K. That Defendants be ordered to pay to Jelly Belly all damages that Jelly Belly
5 has sustained as a consequence of the acts complained of herein, subject to proof at
6 trial, and that Jelly Belly be awarded Defendants' profits derived by reason of said
7 acts, or as determined by said accounting;

8 L. That such damages and profits be trebled and awarded to Jelly Belly pursuant
9 to 15 U.S.C. §1117;

10 M. That Jelly Belly be awarded its costs, attorney fees and expenses in this suit
11 under 15 U.S.C. §1117;

12 N. That Jelly Belly recover exemplary damages pursuant to Cal. Civ. Code
13 §3294;

14 O. An Order for the destruction of infringing articles under 15 U.S.C. §1118; and

15 P. Such other and further relief as this Court may deem just and proper.

16 Respectfully submitted,

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18 KNOBBE, MARTENS, OLSON & BEAR, LLP

19 Dated: 10/15/07

20 By: Karen Vogel Weil
21 Karen Vogel Weil
Brian C. Horne
Jonathan A. Hyman
Reza Mirzaie

22 Attorneys for Plaintiff,
23 JELLY BELLY CANDY COMPANY

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1 **DEMAND FOR TRIAL BY JURY**

2 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby
3 demands trial by jury in this action for all issues so triable.

4 Respectfully submitted,

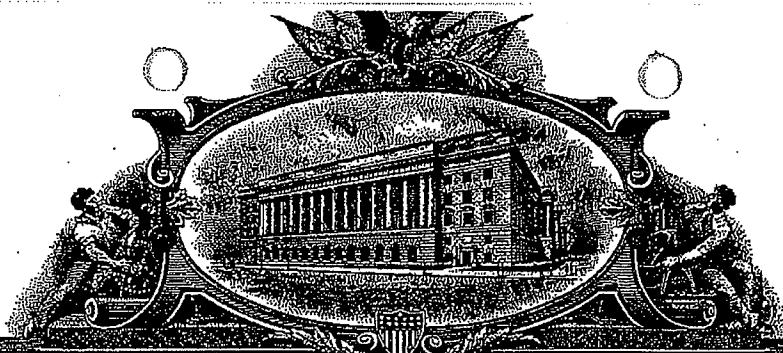
5 KNOBBE, MARTENS, OLSON & BEAR, LLP

6 Dated: 10/15/07

7 By: Karen Vogel Weil
8 Karen Vogel Weil
9 Brian C. Horne
10 Jonathan A. Hyman
11 Reza Mirzaie

12 Attorneys for Plaintiff,
13 JELLY BELLY CANDY COMPANY

14 4374885
15 100507



THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 08, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,203,786 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 20 YEARS FROM *August 03, 1982*

1st RENEWAL FOR A TERM OF 10 YEARS FROM *August 03, 2002*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

JELLY BELLY CANDY COMPANY

A CALIFORNIA CORPORATION

By Authority of the

COMMISSIONER OF PATENTS AND TRADEMARKS



P. SWAIN

Certifying Officer

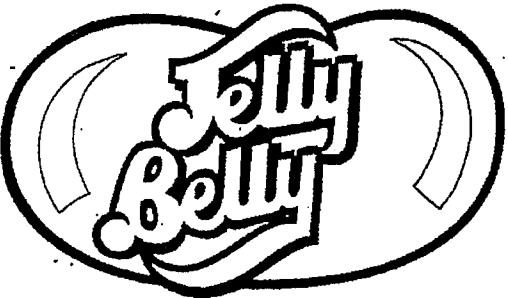
Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,203,786
Registered Aug. 3, 1982

TRADEMARK
Principal Register



Herman Goelitz Candy Co., Inc. (California corporation), a.k.a. Herman Goelitz Inc.
947 - 61st St.
Oakland, Calif. 94608

For: CANDY—NAMELY, JELLY BEANS, in CLASS 30 (U.S. CL. 46).

First use Jul. 15, 1976; in commerce Jul. 15, 1976.
Owner of U.S. Reg. No. 1,132,333.

Applicant disclaims the right to the exclusive use of the word "Jelly" apart from the mark as shown, and applicant disclaims the right to the exclusive use of the design of a jelly bean apart from the mark as shown but applicant waives none of its common law rights in the mark shown in the drawing or any feature thereof.

Ser. No. 288,833, filed Dec. 8, 1980.

JERRY L. PRICE, Primary Examiner

JESSIE N. MARSHALL, Examiner

758866

THE UNITED STATES OF AMERICA

TO ALL TO WHOM THESE PRESENTS SHALL COME:
UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

March 08, 2005

THE ATTACHED U.S. TRADEMARK REGISTRATION 1,232,091 IS CERTIFIED TO BE A TRUE COPY WHICH IS IN FULL FORCE AND EFFECT WITH NOTATIONS OF ALL STATUTORY ACTIONS TAKEN THEREON AS DISCLOSED BY THE RECORDS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE.

REGISTERED FOR A TERM OF 20 YEARS FROM *March 22, 1983*

1st RENEWAL FOR A TERM OF 10 YEARS FROM *March 22, 2003*

SECTION 8 & 15

SAID RECORDS SHOW TITLE TO BE IN:

*JELLY BELLY CANDY COMPANY
A CALIFORNIA CORPORATION*

By Authority of the
COMMISSIONER OF PATENTS AND TRADEMARKS


P. SWAIN

Certifying Officer



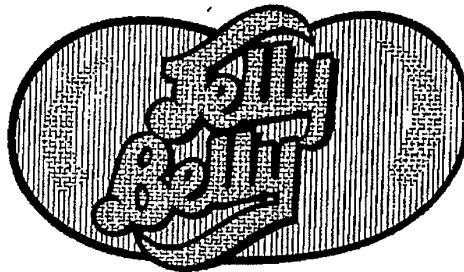
Int. Cl.: 30

Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 1,232,091
Registered Mar. 22, 1983

TRADEMARK
Principal Register

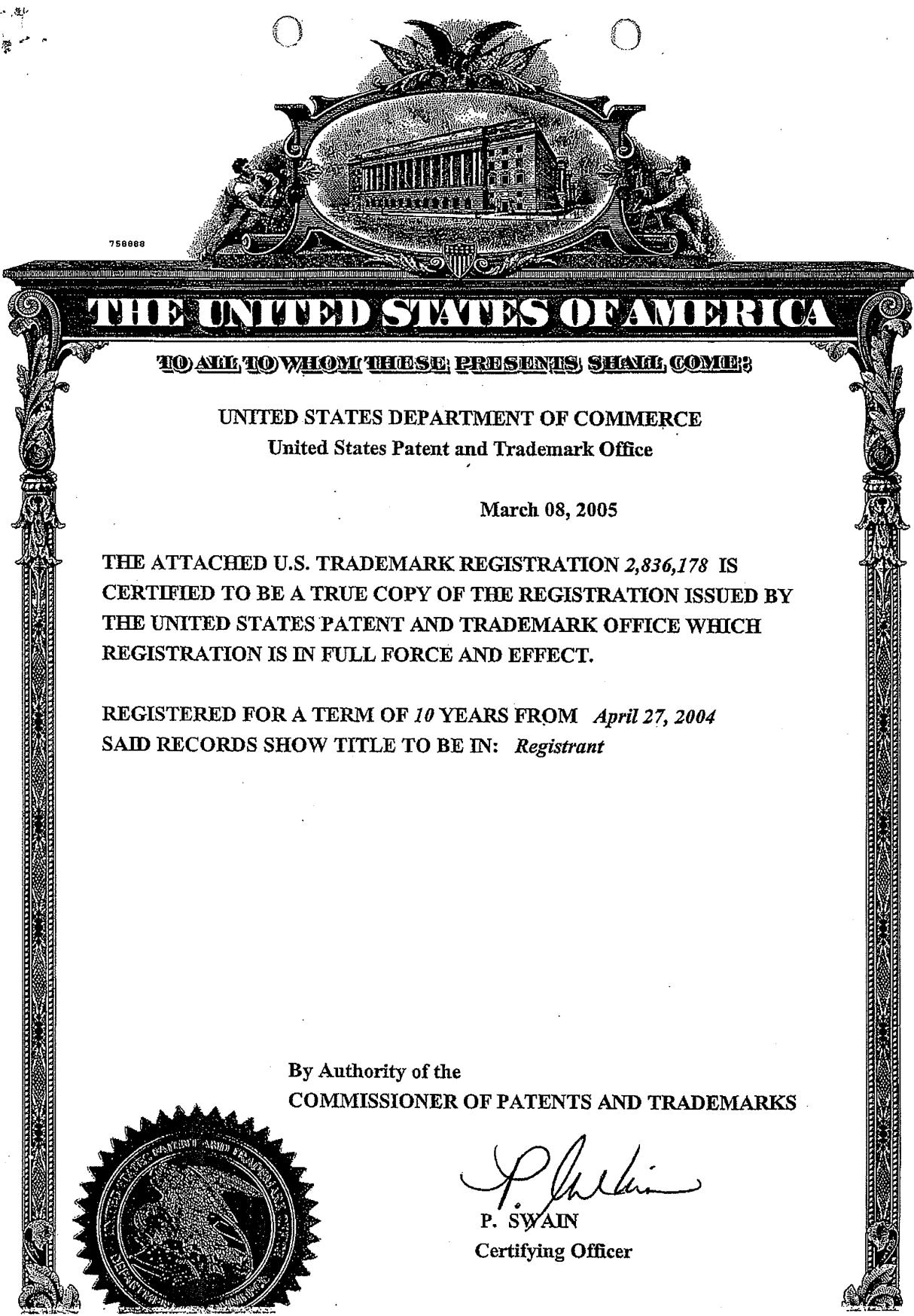


Herman Goelitz Candy Co., Inc. (California corporation), a.k.a. Herman Goelitz Inc.
947 - 61st St.
Oakland, Calif. 94608

For: CANDY—NAMELY, JELLY BEANS, in CLASS 30 (U.S. Cl. 46).
First use Jul. 15, 1976; in commerce Jul. 15, 1976.
Owner of U.S. Reg. No. 1,132,333.
No claim is made to the exclusive right to use the word "Jelly", apart from the mark as shown.
The drawing is lined for the colors red and yellow.

Ser. No. 288,834, filed Dec. 8, 1980.

JERRY L. PRICE, Examining Attorney



Int. Cl.: 30

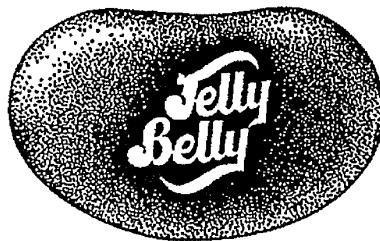
Prior U.S. Cl.: 46

United States Patent and Trademark Office

Reg. No. 2,836,178

Registered Apr. 27, 2004

TRADEMARK
PRINCIPAL REGISTER



JELLY BELLY CANDY COMPANY (CALIFORNIA CORPORATION)
ONE JELLY BELLY LANE
FAIRFIELD, CA 94533-6741

FOR: CANDY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-23-2002; IN COMMERCE 9-23-2002.

OWNER OF U.S. REG. NOS. 1,132,333, 2,695,195
AND OTHERS.

THE STIPPLING IN THE DRAWING OF A PROGRESSIVE INCREASE IN DENSITY IS FOR SHADING PURPOSES ONLY, TO GIVE THE TWO-DIMENSIONAL JELLY BEAN THE APPEARANCE OF A THREE-DIMENSIONAL, LIFE-LIKE JELLY BEAN.

SER. NO. 76-509,827, FILED 4-28-2003.

ALICIA COLLINS, EXAMINING ATTORNEY

STATE OF CALIFORNIA

SECRETARY OF STATE

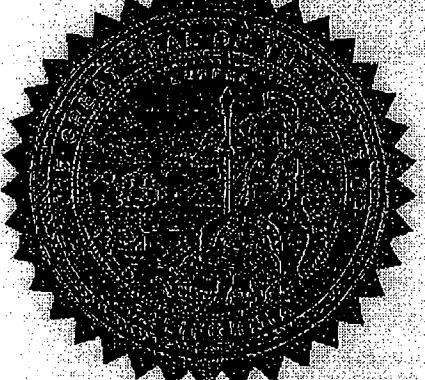
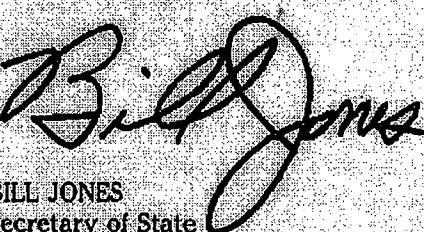
Trademark Reg. No. 62724 Class No. 30 Assignment No. 101441
CERTIFICATE OF RECORDATION OF ASSIGNMENT OF TRADEMARK

I, BILL JONES, Secretary of State of the State of California, hereby certify:

That an instrument of assignment has been recorded in this office which shows that the TRADEMARK described below has been transferred to the assignee named below:

Name of Assignee: Jelly Belly Candy Company
Business Address: 1 Jelly Belly Lane Fairfield, CA 94533
Name of Assignor: Herman Goelitz Candy Company, Inc.
Date First Used in California: July 16, 1976
Date First Used Anywhere: July 16, 1976
Description of Trademark: "Jelly Belly" with jelly bean design
Description of Goods on Which the Trademark is Used: Candy, namely jelly beans
Date of Registration: January 5, 1981
Term of Registration Extends to and Includes: January 5, 2011

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this
21st day of June, 2001



BILL JONES
Secretary of State

State of California



SECRETARY OF STATE

Trademark Reg. No. 62724

Class No. 30

Renewal No. 16579

CERTIFICATE OF RENEWAL OF TRADEMARK

I, BILL JONES, Secretary of State of the State of California, hereby certify:

That an application for renewal has been filed in this office for the TRADEMARK described below:

Name of Applicant: Herman Goelitz Candy Company, Inc.

Business Address: 2400 North Watney Way, Fairfield, CA 94533

Date First Used in California: July 16, 1976

Date First Used Anywhere: July 15, 1976

Description of Trademark: "Jelly Belly" with jelly bean design

Description of Goods on Which the Trademark Is Used: Candy, namely jelly beans

Date of Registration: January 5, 1981

Term of Registration Extends to and Includes: January 5, 2011

IN WITNESS WHEREOF, I execute
this certificate and affix the Great
Seal of the State of California this
31st day of August, 2000



A handwritten signature of Bill Jones in black ink, enclosed in a large oval.

BILL JONES
Secretary of State

Exhibit 4 Page 7 of 7

(1989)

Why Jelly Belly is no ordinary jelly bean.

1. Created with natural ingredients for flavoring whenever possible, i.e. real peanut butter, chocolate, fruit purees, etc.
2. "True-to-life flavors"—it tastes the way you'd expect it to taste.
3. Flavored in the center as well as in the outside shell.
4. Softer, smaller and brighter.
5. A dieter's delight at only 4 calories per bean.

Helpful hints on how to use Jelly Belly beans.

1. Create colorful hostess gifts by filling any fun container with Jelly Belly beans.
2. Match your team colors and hand out at tailgate parties.
3. Use as exciting decorations for cakes and cupcakes.
4. Sprinkle over ice cream and frozen yogurt.
5. Throw a "bean tasting" party for friends.

Manufactured and distributed by: Herman Goeltz, Inc., Fairfield, CA 94533-6722 and Goeltz Confectionery Co., North Chicago, IL 60064-1050. ®Jelly Belly and "The original gourmet jelly bean" are registered trademarks of Herman Goeltz, Inc. ©1989 Herman Goeltz, Inc.
Printed in U.S.A. 42015 2/89

THE FORTY OFFICIAL JELLY BELLY FLAVORS

Apricot	Blueberry	Bubble Gum	Buttered Popcorn	Cantaloupe	Chocolate Fudge	Chocolate Mint	Chocolate Pudding	Cinnamon	Coconut
Coffee Bean	Cotton Candy	Creme Soda	Grape	Green Apple	Ice Blue Mint	Island Punch	Jalapeno	Lemon	Lemon Lime
Lemon Meringue	Licorice	Mai Tai	Orange	Orange Sherbet	Peach	Peanut Butter	Piña Colada	Pineapple	Pink Grapefruit
Raspberry	Root Beer	Strawberry Daiquiri	Tangerine	Toasted Marshmallow	Top Banana	Totally Mint	Tutti-Fruitti	Very Cherry	Watermelon

TRY THESE FAVORITE JELLY BELLY RECIPES

Lemon Macaroon (2) Coconut + (1) Lemon Meringue + (1) Very Cherry =

Frozen Banana (1) Top Banana + (2) Chocolate Pudding =

Pink Lemonade (1) Lemon + (1) Cotton Candy =

Key Lime Pie (1) Lemon Lime + (1) Toasted Marshmallow =

Directions: To savor true Jelly Belly flavor, eat one at a time. Or combine flavors for a real gourmet treat.

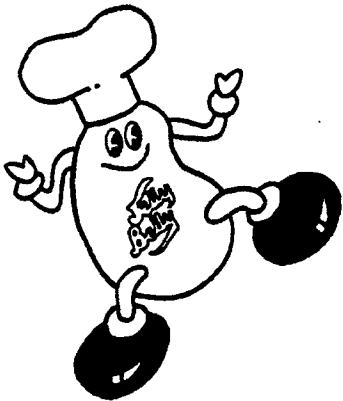
Int. Cls.: 16 and 30

Prior U.S. Cls.: 38 and 46

Reg. No. 1,337,901
Registered May 28, 1985

United States Patent and Trademark Office

**TRADEMARK
PRINCIPAL REGISTER**



HERMAN GOELITZ CANDY CO., INC. (CALIFORNIA CORPORATION), D.B.A. HERMAN GOELITZ, INC.
947 - 61ST ST.
OAKLAND, CA 94608

FOR: PAPER STICKERS, IN CLASS 16 (U.S. CL. 38).

FIRST USE 9-30-1983; IN COMMERCE 9-30-1983.

FOR: CANDY, IN CLASS 30 (U.S. CL. 46).

FIRST USE 9-30-1983; IN COMMERCE 9-30-1983.

OWNER OF U.S. REG. NOS. 1,203,786, 1,232,091 AND OTHERS.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "JELLY", APART FROM THE MARK AS SHOWN.

SER. NO. 509,451, FILED 11-19-1984.

HENRY S. ZAK, EXAMINING ATTORNEY